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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SANDRA KIRKMAN AND
CARLOS ALANIZ,
INDIVIDUALLY AND AS
SUCCESSORS-IN-INTEREST TO
JOHN ALANIZ, DECEASED,

Plaintiff,

v.

STATE OF CALIFORNIA;
RAMON SILVA; AND DOES 1-10,
INCLUSIVE,

Defendant.

Case No.: 2:23-cv-07532-DMG-SSC

**OPPOSITION TO PLAINTIFFS'
MOTION IN LIMINE TO EXCLUDE
TESTIMONY AND EXHIBITS OF
ROD ENGLERT, NIKKI WAGAR
AND CHERYL KANZLER**

Courtroom: 8C
Judge: Hon. Dolly M. Gee

FPTC: March 25, 2025, 2:00 p.m.

Trial Date: April 15, 2025, 8:30 a.m.

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INTRODUCTION

This case arises out of the fatal shooting of John Alaniz by California Highway Patrol Officer Ramon Silva.

John Alaniz tried to kill himself by jumping in front of a big-rig on the I-105 freeway. Upon contact with the officers, Alaniz ignored commands to remove his hands from his pocket until he pulled object(s) from his pocket and immediately charged directly at the officers with his hands together and outstretched in front of him in the classic “shooter's stance.” Reasonably believing Alaniz had a gun and was going to shoot (as anyone would), Silva responded with objectively reasonable deadly force.

Much of the incident was captured by Silva’s BWC. There is about one second of the incident – the time between Silva’s first and last shot – where Alaniz is blocked by Silva’s arms.

Defendants retained a team of three experts lead by Rod Englert (along with Nikki Wagar and Cheryl Kanzler) to conduct a forensic reconstruction of the shooting. The well-qualified experts came to their conclusions and opinions after examining and analyzing all available evidence and conducting a forensic reconstruction of the incident. After formulating their conclusions and opinions, eight animations were created with the assistance of video expert Samir Lyons illustrating those opinions in video form. *See* Roistacher Declaration, Exh. 8 (Rule 26 report); *id.*, Exh. 10 (animations); Declarations of Englert, Wagar, Kanzler and Lyons.

It is Englert’s opinions regarding what Alaniz was doing in the second where he is not visible on the BWC that plaintiffs challenge under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). According to plaintiffs, Englert’s opinions regarding Alaniz’s body position, including having an object in his hands, are inconsistent with and contradict by *their view* of the evidence. To that end, plaintiffs argue the

1 animation is speculative and prejudicial. Yet plaintiffs do not specify which of
2 the eight animations they challenge and indeed do not even provide this Court
3 will all of them.¹ This alone is sufficient to reject plaintiffs' challenge.

4 Plaintiffs' evidentiary criticisms of Englert's opinions are categorically not
5 grounds for exclusion, though they are grounds for cross-examination. *See Elosu*
6 *v. Middlefork Ranch Inc.*, 26 F.4th 1017, 1020 (9th Cir. 2022) (district court
7 erred in excluding expert opinion when the "court took issue with [his] 'ultimate
8 conclusions,' finding that the substance of his opinion was speculative, uncertain,
9 and contradicted by multiple eyewitness accounts.").

10 Accordingly, this Court should deny plaintiffs' motion.

11 ARGUMENT

12 A. Plaintiffs' Challenge To Englert's Opinions Fails

13 1. Admissibility standards for expert opinions

14 In evaluating the admissibility of expert testimony, the trial court is "'a
15 gatekeeper, not a fact finder.'" *Elosu*, 26 F.4th at 1024. As the Ninth Circuit has
16 repeatedly explained:

17 Ultimately, the test under *Daubert* is not the correctness of the
18 expert's conclusions but the soundness of his methodology. ...
19 Accordingly, the district court is not tasked with deciding
20 whether the expert is right or wrong, just whether his testimony
21 has substance such that it would be helpful to a jury. If the
22 proposed testimony meets the thresholds of relevance and
23 reliability, its proponent is entitled to have the jury decide upon
24 its credibility, rather than the judge. Challenges that go to the
25 weight of the evidence are within the province of a fact finder,
26 not a trial court judge. A district court should not make
27 credibility determinations that are reserved for the jury. ... This
28 Court has previously noted that shaky but admissible evidence
is to be attacked by cross examination, contrary evidence, and
attention to the burden of proof, not exclusion.

25 *Id.* (simplified); *see also Alaska Rent-A-Car, Inc. v. Avis Budget Grp., Inc.*, 738

27 ¹ Plaintiffs manually lodged some but not all of the animations. Defendants will
28 manually lodge all of them.

1 F.3d 960, 969-70 (9th Cir. 2013) (“Basically, the judge is supposed to screen the
2 jury from unreliable nonsense opinions, but not exclude opinions merely because
3 they are impeachable. The district court is not tasked with deciding whether the
4 expert is right or wrong, just whether his testimony has substance such that it
5 would be helpful to a jury.”).

6 **2. Plaintiffs’ evidentiary criticism of Englert’s opinions provides no legal**
7 **basis to exclude them**

8 ““Expert opinion testimony is relevant if the knowledge underlying it has a
9 valid connection to the pertinent inquiry. And it is reliable if the knowledge
10 underlying it has a reliable basis in the knowledge and experience of the relevant
11 discipline.” *Alaska Rent-A-Car, Inc.*, 738 F.3d at 969.

12 As demonstrated in the Rule 26 report and in the declarations of Englert,
13 Wagar, Kanzler, Englert’s opinions meet both the relevance and reliability
14 requirements under Federal Rule of Evidence 702. These are highly qualified
15 experts whose experience relates directly to their inquiries, and the opinions are
16 based on their experience and view of the evidence. *Elosu*, 26 F.4th at 1024
17 (referring to Federal Rule of Evidence 702: “An expert’s specialized knowledge
18 and experience can serve as the requisite ‘facts or data’ on which they render an
19 opinion.”).

20 In plaintiffs’ view, Englert’s opinion regarding Alaniz’s body positioning
21 is “inconsistent and contradicts established evidence.” Doc. 107, p. 4.
22 Defendants disagree. Ironically, plaintiffs’ support their position by pointing to
23 Englert’s deposition testimony wherein he agrees there is no video evidence
24 capturing Alaniz’s body at the time of the second shot because he is blocked by
25 Silva’s arms. *Id.*, p. 5. That begs the question – if there is no video evidence of
26 it then how can Englert’s opinion contradict it? Of course, it cannot.
27 Plaintiffs also assert that Englert “has no basis for placing the object in Alaniz’s
28 hand at the time of the shots.” *Id.*, p. 5. Defendants disagree with this as well.

1 Regardless of the parties’ disagreement about the evidentiary basis of
2 Englert’s opinions on these two issues, it is something for the jury and not this
3 Court to resolve. *Elosu*, 26 F.4th at 1025-26 (“Rule 702 does not license a court
4 to engage in freeform factfinding, to select between competing versions of the
5 evidence, or to determine the veracity of the expert's conclusions at the
6 admissibility stage.”); *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036,
7 1049 (9th Cir. 2014) (“A factual dispute is best settled by a battle of the experts
8 before the fact finder, not by judicial fiat.”); *United States v. L.E. Cooke Co.*, 991
9 F.2d 336, 342 (6th Cir. 1993) (“[A]ny weaknesses in the factual basis of an
10 expert witness’ opinion . . . bear on the weight of the evidence rather than on its
11 admissibility.”) (original ellipses); *Krommenhock v. Post Foods, LLC*, 334
12 F.R.D. 552, 585 (N.D. Cal. 2020) (“Plaintiffs next challenge the reliability of
13 Clemens' opinions, arguing they are based on insufficient facts and data. These
14 challenges go to weight, not admissibility.”); *Aventis Env't Sci. USA LP v. Scotts*
15 *Co.*, 383 F. Supp. 2d 488, 514 (S.D.N.Y. 2005) (“Defendants are free to
16 challenge the basis and source for [the proposed expert]'s numbers, but a
17 challenge to the facts or data relied upon by [the proposed expert] does not go to
18 the admissibility of his testimony, but only to the weight of his testimony.”).

19 Because there is no visual evidence of Alaniz’s body between the second
20 and last shot by Silva, Englert relied (as explained in his deposition) on his
21 unchallenged experience and knowledge in forensic reconstruction in connection
22 with the available evidence, and assumptions reasonably drawn from his
23 experience, knowledge and available evidence, to reach his conclusions on both
24 the positioning of Alaniz’s body and Alaniz retaining the object in his hands
25 during the shooting, Roistacher Declaration, Exh. 9 (Englert Deposition), pp. 14-
26 23, 28-41, 50-76. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 156 (1999)
27 (expert may “draw a conclusion from a set of observations based on extensive
28 and specialized experience” and formulate an opinion through “visual

1 examination and process of elimination”); *United States v. Holguin*, 51 F.4th
2 841, 854 (9th Cir. 2022) (expert may rely on personal knowledge or experience
3 to formulate opinion); *Nenkov v. Siegmann*, 2025 U.S. Dist. LEXIS 49305, at
4 *9 (W.D. Wash. Mar. 18, 2025) (“An expert may rely on assumptions when
5 formulating opinions. Fed. R. Evid. 702, advisory committee notes to 2000
6 amendments (‘The language ‘facts or data’ is broad enough to allow an expert to
7 rely on hypothetical facts that are supported by the evidence.’)”); *Unknown Party*
8 *v. Ariz. Bd. of Regents*, 641 F. Supp. 3d 702, 727 (D. Ariz. 2022) (“Disagreement
9 with an expert's assumptions does not, in general, provide a basis for excluding
10 the expert's testimony.”); Fed. R. Evid. 702 advisory committee's note to 2000
11 amendment (“[P]roponents do not have to demonstrate to the judge by a
12 preponderance of the evidence that the assessments of their experts are correct,
13 they only have to demonstrate by a preponderance of evidence that their opinions
14 are reliable”)).

15 Indeed, this Court in *M.R. v. City of Azusa*, 2014 U.S. Dist. LEXIS 204804
16 (C.D. Cal. Oct. 1, 2014) refused to exclude Englert’s opinions and rejected the
17 same arguments plaintiffs make here²:

18 Plaintiffs also request that the Court exclude Englert's opinions
19 regarding Rivera's body position and movements at the time of
20 the shooting. Plaintiffs challenge Englert on the basis of his
21 qualifications under Federal Rule of Evidence 702 and *Daubert*
22 More specifically, they seek to exclude the opinion that
23 Rivera's right hand was concealed, his shoulder dropped, his
24 upper torso turned to his right, twisting towards Kimes at the
25 time of the shooting. [Citation]. Further, Plaintiffs object to
26 Englert's second opinion that (1) the bullet path established by
the medical examiner corroborates Kimes's statement that
Rivera's torso was turned toward the right and his right
shoulder was dipped, and (2) the trajectory of the other bullet
that struck the cinder block wall undermines Plaintiffs'
contention that Rivera was facing away from the shooting
officer and shot in the back without making any threatening
movements. [Citation]. In response to the latter point,
Defendants contend that because the bullets were fired in rapid

27 ²The *M.R.* docket reveals plaintiffs’ counsel here represented the plaintiffs in
28 *M.R.*

1 succession, the fact that one bullet hit the wall while the other
2 struck Rivera indicates that he was turning as the bullets were
3 fired. [Citation]. After reviewing the excerpts of Englert's
4 report and resumé, the Court concludes that his opinions have
adequate factual support to be admissible and Englert is
qualified to testify as an expert.

5 2014 U.S. Dist. LEXIS 204804, at *10-11. The result is the same here.

6 Plaintiffs also criticize Engert's opinions because his Rule 26 report "lacks
7 the necessary transparency and documentation for a reliable forensic analysis"
8 because the report does not detail the varying positions of Alaniz's body Englert
9 considered before concluding which was most likely. Doc. 107, p. 7. The latter
10 may be true, but the former is not. Rule 26 does not require an expert to identify
11 and describe every scenario considered but only "the facts and data considered by
12 the witness in forming [his or her opinions]." Fed. R. Civ. P. 26(a)(2)(B)(ii). And
13 the failure to do so provides no basis for exclusion. *See Ironhawk Techs., Inc. v.*
14 *Dropbox, Inc.*, 2 F.4th 1150, 1166 (9th Cir. 2021) ("The lack of certain specific
15 details goes to the weight of the testimony, not its admissibility. And the weight
16 is to be assessed by the trier of fact at trial[.]") Regardless, Englert explained in
17 his deposition the reasons for his conclusions and plaintiffs are free to cross-exam
18 Englert on this issue. Exh. 9, pp. 14-23, 28-41, 50-76.

19 **B. Plaintiffs' Challenge To The Animations Fails Because Animations Are**
20 **Demonstrative Or Illustrative Aids And Do Not Have To Meet The**
Admissibility Standards Of Federal Rule Of Evidence 702

21 Plaintiffs only challenge to the animations is to what they depict. Though
22 unclear the precise authority for the challenge, it appears to rest on Rule 702 as
23 plaintiffs bring this motion as a *Daubert* motion and do not cite any other basis
24 for exclusion. Plaintiffs' motion fails at the outset because animations reflecting
25 an expert's already formed opinions need not meet the admissibility standards of
26 Rule 702. *Van Loo v. United States*, 2025 U.S. Dist. LEXIS 38652, at *8-9
27 (W.D. Wash. Mar. 4, 2025). That is the case here. As the declarations of
28 Englert, Wagar, Kanzler and Lyons and the Rule 26 report establishes, the

1 animations were created after Englert formed his opinions to provide a visual
2 representation of them. *See id.* at *18 (“The Court concludes that the model
3 itself is demonstrative, not substantive evidence, as it is ‘a product of [the
4 expert’s] review of the evidence and illustrate[s] the conclusions he drew.’”).

5 Because plaintiffs offer no challenge to the animations other than a Rule
6 702 challenge, the Court could stop here and deny plaintiffs’ motion. But
7 defendants nevertheless explain why the animations are admissible as
8 demonstrative or illustrative aids. *See Van Loo*, 2025 U.S. Dist. LEXIS 38652 at
9 *8 (“The Ninth Circuit has recognized that ‘demonstrative aid’ and ‘illustrative
10 aid’ are equivalent terms”).

11 The Ninth Circuit allows for the use of computer animations to help
12 explain or illustrate expert opinions. *M.R.*, 2014 U.S. Dist. LEXIS 204804, at
13 *9; *accord Van Loo v. United States*, 2025 U.S. Dist. LEXIS 38652, at *7 (W.D.
14 Wash. Mar. 4, 2025); *Krause v. Cty. of Mohave*, 459 F. Supp. 3d 1258, 1271 (D.
15 Ariz. 2020).

16 Indeed, the Federal Rules of Evidence endorse their use. *Krause*, 459 F.
17 Supp. 3d at 1271; 1 Federal Rules of Evidence Manual § 403.02[11] (2024). To
18 be sure, newly enacted Federal Rules of Evidence 107(a) provides animations
19 can be used as “an illustrative aid to help the trier of fact understand the evidence
20 or argument if the aid’s utility in assisting comprehension is not substantially
21 outweighed by the danger of unfair prejudice, confusing the issues, misleading
22 the jury, undue delay, or wasting time.”

23 Because demonstrative or illustrative aids are not “evidence” provided to
24 the jury during deliberations, *Van Loo*, 2025 U.S. Dist. LEXIS 38652, at *6; Fed.
25 R. Evid. 107(b), animations need only “satisfy[y] the usual foundational
26 requirements for demonstrative evidence.” *M.R.*, 2014 U.S. Dist. LEXIS
27 204804, at *9; *accord Krause*, 459 F. Supp. 3d at 1271. An animation need only
28 “‘fairly and accurately depict what it represents” which can be established

1 “through the computer expert who prepared it or some other witness who is
2 qualified to so testify.” *M.R.*, 2014 U.S. Dist. LEXIS 204804, at *9 (quoting
3 *Friend v. Time Mfg. Co.*, 2006 U.S. Dist. LEXIS 52790, at *20 (D. Ariz. July 28,
4 2006)) (alterations in *M.R.* omitted).

5 In *M.R.*, this Court denied a motion in limine to exclude an animation
6 illustrating Englert’s opinions. The plaintiffs argued, like plaintiffs do here, “that
7 Englert’s computer-animated reconstruction of the incident should be excluded
8 because it was inconsistent with the evidence and would be confusing and
9 misleading to the jury” by “highlight[ing] a series of differences between the
10 incident as described in depositions and interviews and the incident as depicted
11 in the animated reconstruction. *M.R.*, 2014 U.S. Dist. LEXIS 204804, at *8.
12 These included purported inconsistencies, like plaintiffs assert here, regarding the
13 positioning of the decedent’s body when he was shot. *Id.* at *8-9.

14 This Court held that “because Plaintiffs will have the opportunity to
15 challenge these inconsistencies between the video and the testimony at trial ... the
16 animated reconstruction is admissible so long as it ‘fairly and accurately depicts’
17 the testimony presented by Englert or another witness at trial.” *M.R.*, 2014 U.S.
18 Dist. LEXIS 204804, at *10; *see also Krause*, 459 F. Supp. 3d at 1272 (“Plaintiff
19 does not challenge [the expert’s] methodology, but instead argues the end
20 product misleads. To the extent the parties contest the accuracy of the underlying
21 data that supports [his] depictions, such weaknesses can be addressed through
22 cross-examination and other expert testimony. But, as illustrative animations—
23 rather than exact recreations—of the incident, the Court finds no sound basis to
24 exclude the animations.”).

25 The Court should come to the same conclusion here and deny plaintiffs’
26 motion. Indeed, based on the declarations of Englert, Wagar, Kanzler and
27 Lyons, and the Rule 26 report, the foundation for the animations has already
28 been established and this Court should find the animations admissible.

CONCLUSION

This Court should deny plaintiffs' motion and in doing so should also find the animations admissible.

Dated: March 21, 2025

Dean Gazzo Roistacher LLP

By: /s/ Lee H. Roistacher

Lee H. Roistacher
Attorneys for Defendants
State of California by and through
California Highway Patrol and
Officer Ramon Silva

CERTIFICATION OF COMPLIANCE

The undersigned, counsel of record for Defendants State of California by and through California Highway Patrol and Officer Ramon Silva, certify that this Opposition To Plaintiffs' Motion In Limine To Exclude Testimony And Exhibits Of Rod Englert, Nikki Wagar And Cheryl Kanzler contains 2,697 words, which:

 X complies with the word limit of L.R. 11-6.1.

 complies with the word limit set by court order dated [date].

Dated: March 21, 2025

/s/ Lee H. Roistacher

Lee H. Roistacher , declarant